IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.725 OF 2004

The Kapol Co-operative Bank
Ltd., having its Administrative
Office at: 1402/1403, Dalamal
Tower, Nariman Point,
Mumbai-400 021,
through its Senior Officer
Rajendra Pruthviraj Satam. .... Petitioner

- Versus -

1. State of Maharashtra

2. The Commissioner of Police
   Mumbai.

3. Joint Commissioner of Police,
   Crime Investigation Depart-
   ment, Mumbai.

4. Deputy Commissioner of Police

5. Addl. Commissioner of Police,
   Economic Offences Wing,
   D.C.B., C.I.D., Mumbai.

Nos.2 to 5 having their office at
Police Commissioner's Office,
Mumbai.

6. The Senior Inspector of Police,
   Cuffe Parade Police Station,
   Mumbai, in respect of their
   M.E.C.R. No.4/2004, registered
   for the offences punishable
   under Sections 120-B, 420,
   465, 467, 468, 471 of IPC. .... Respondents

Shri I.S. Thakur, Addl. Public Prosecutor,
for the Respondent-State.

Shri A.V. Anturkar for the Contemner.

CORAM: R.M.S. KHANDEPARKAR &
R.S. MOHITE, JJ.

DATED: AUGUST 5, 2004

ORDER (Per R.M.S.Khandeparkar, J.):

1. The above petition was filed seeking a writ of mandamus for transfer of investigation of MECR No.4/2004, registered for the offences punishable under Sections 120-B, 420, 465, 467, 468 and 471 of the Indian Penal Code to the respondent No.5, who is the Addl. Commissioner of Police, Economic Offences Wing, DCB-CID, Mumbai. While opposing the said petition, the investigation officer Shri Mandar V. Dharmadhikari, Asst. Police Officer, attached to the Cuffe Parade Police Station, Mumbai, had filed two affidavits and the same disclosed false statements on oath and prima facie appeared to have been made with the intention to mislead the Court and to get the petition dismissed at the admission stage itself. While granting the relief prayed for in the petition under the order dated 8-7-2004, a notice was directed to be issued to Shri Mandar V. Dharmadhikari as to why he should not be prosecuted and punished for contempt of Court for filing the said false affidavits and trying to mislead the Court with the intention of obtaining order against the petitioner when the materials clearly justified the

grant of relief prayed for. In reply to the said notice, Shri Dharmadhikari filed his affidavit dated 23-7-2004.

2. The facts in brief relevant for the decision are that the learned Magistrate by his order passed under Section 156(3) of the Cr.P.C. had forwarded the complaint of the petitioner to the Cuffe Parade Police Station for investigation purpose. The same was received by the said police station on 5-1-2004, and was assigned to Shri Dharmadhikari for investigation. Yet the concerned police officer did not take any step even to register the case till 15-2-2004. Even though the complaint filed before the Magistrate and duly forwarded to the police station along with the said order under Section 156(3) of the Cr.P.C. was required to be treated as the FIR, the police officer chose to record further statement of the complainant and to treat the same as the FIR. The records further disclosed that there was absolutely no justification for the investigating officer to delay the commencement of investigation till 15-2-2004. The records also disclosed that the matters, which were referred for investigation to the said police officer subsequent to the receipt of the order in question on 5-1-2004, were taken up for investigation much earlier to the case in hand and yet there was no explanation for such approach

on the part of the officer. The records further disclosed that at the instance of the investigating agency itself all the zerox copies of the relevant documents were already furnished to the investigating officer and yet as late as on 1-4-2004 the investigating officer, for the first time, informed about the necessity of the original documents. At the same time the investigating officer himself stated in his affidavit dated 29-4-2004, hereinafter called as "the first affidavit" that the case was purely based on documents which were already seized by him and nothing more was required to be investigated except arresting the accused and filing chargesheet. As regards action against the accused persons, apart from putting up a note for need of arrest of one accused, nothing further was done till the day the matter came up before the Court or even when the matter was pending before the Court. It was also revealed that as per Standing Order No.140, cases involving property worth Rs.25 lakhs and above are required to be investigated by the Economic Offences Wing, DCB-CID, Mumbai and the amount involved in the matter is above one-and-half crore. All these facts and those mentioned in the rejoinder by the petitioner clearly justified transfer of the investigation to the respondent No.5, besides being the fact that the learned A.P.P. fairly conceded to the need for transfer of the investigation to the respondent

No.5 even though the investigating officer Shri Dharmadhikari had opposed the same by filing two affidavits. By order dated 8-7-2004, therefore, the investigation was ordered to be transferred to the respondent No.5, while issuing show cause notice to Shri Dharmadhikari on account of false statements made in his affidavits filed in the said petition.

3. In reply to the show cause notice, the contemner, in his affidavit, has stated that he was not careful in giving proper facts and instructions to the learned A.G.P. for drafting the affidavits filed by him in the above petitions and consequently incorrect statements were made in para 9 of the first affidavit and in para 3 of the second affidavit. The contemner has further sought to tender unconditional apology while stating that he was careless on his part and he has realised what grave mistake he has committed. At the same time, he has also stated that he had not made any attempt to mislead the Court and the contents of the first affidavit itself disclosed that the investigation was not complete and it was apparent from the contents of para 6 thereof and further that the statement regarding conclusion of the investigation excluding the reference to the arrest of the accused Shri Keyur Shah, Smt. Vaishali Shah and Shri Balkrishna Rane and the statement was not made wilfully or with intention to mislead the

Court. He has further stated that he has realised that he should have been more careful in giving proper instructions and making affidavit in the Court. At the same time he has also stated that in any case the mistake committed by him does not substantially interfere with the administration of justice nor it was intended to interfere with the administration of justice, but the said mistake was only on account of carelessness and was neither wilful nor with intention to mislead the Court.

4. The learned Advocate for the contemner has submitted that the contemner while seeking to tender an unconditional apology has admitted that the statements being not correct, do amount to contempt of Court. He has further submitted that there was neither any intention to mislead the Court nor the act on the part of the contemner can be said to be one which amounts to interference in the administration of justice in terms of Section 2(c)(iii) but the case will have to be considered to find out whether it can fall under Section 2(c)(ii) i.e. amounting to interference in due course of any judicial process. Further, drawing attention to Section 13 of the Contempt of Courts Act, 1971, the learned Advocate has submitted that since the contempt is not of such a nature that it substantially interferes or tends to substantially interfere with the due course

of justice, a lenient view be taken and while accepting the apology the contemner needs to be pardoned. Reliance is sought to be placed in the decision of the Apex Court in the matter of **Delhi Development Authority v. Skipper Construction and another,** reported in (1995) 3 SCC 507 and in the matter of **Pritam Pal v. High Court of Madhya Pradesh, Jabalpur through Registrar,** reported in 1993 Supp (1) SCC 529.

5. In the first affidavit filed by the said investigating officer on 29-4-2004 in the above petition, it was stated that

> "..... that the whole case of the complainant is based upon the documents which had already been seized by me during investigation and nothing more is required to be investigated, except arresting the accused and filing the chargesheet."

while in the subsequent affidavit dated 18-6-2004 it has been stated that

> "..... during the investigation it was revealed that the complainant Bank granted various facilities to the

> accused and renewed it twice though the accused have not repaid the amount as promise, shows involvement of Bank Officials and same is required to be investigated thoroughly."

In the course of the arguments, to the query by the Court, the learned A.P.P., on taking instructions from the investigating officer who was present in the Court, it was informed to the Court that the investigating officer in March last itself had apprehension about involvement of the bank officials and the need for investigation in that regard.

6. Another affidavit was filed by Shri Dharmadhikari on 18-6-2004 and the same is hereinafter called as "the second affidavit". The second affidavit disclosed specific averment to the effect that when the case in hand was entrusted to the investigating officer, he was already busy with investigation in the "earlier assigned cases" to him. Para Nos.2 and 3 of the second affidavit read thus:-

> "2. I say that the complainant has filed his complaint before the learned Metropolitan Magistrate, 47th Court, Esplanade, Mumbai and the same was

received by Cuffe Parade Police Station, Mumbai along with the order passed by the Learned Magistrate on 5.1.2004 and as per the usual procedure and practice the Sr. Police Inspector attached to Cuffe Parade Police Station marked the same to me for carrying out the investigation on 5.1.2004.

3. I say that the following cases were earlier handed over to me for the purpose of investigation:

1. CR No.149 of 2001
2. Cr No.161 of 2003
3. CR No.186 of 2003
4. MECR No.7 of 2003
5. MECR No.1 of 2004
6. MECR No.2 of 2004
7. MECR No.3 of 2004

Hence, I was busy in investigating the aforesaid cases. However, on 13.1.2004 I called the complainant Mr. Satam and recorded his statement and thereafter after following the due procedure of consulting the

> superiors. I called and recorded the statement of Mr. Balkrishna Rane of M/s. Rane Engineers on 13.2.2004. On 15.2.2004 I registered the CR as MECR No.4 of 2004 against 1) Hasmukhlal Harilal Doshi, 2 Prakash Hasmukhlal Doshi, 3) Smt. Bhavana Prakash Doshi, 4) Rajiv Hasmukhlal Doshi, 5) Smt. Rupal Rajiv Doshi, 6) Shri Keyur K. Shah and 7) Smt. Vaishali Keyur Shah under sections 420, 406, 465, 467, 468, 471 r.w. 34 of Indian Penal Code."

The details regarding the date of orders by the Magistrate in MECR Nos.2/04 and 3/04 furnished by the investigating officer on 29-6-2004 pursuant to Court's order, read thus:-

> "In respect of MECR 2/04 I received the paper along with the Hon'ble courts order on 17/1/2004. I recorded the detail statement of the complainant and submitted the noting on 9/2/2004. After consulting ACP Colaba Division, I registered the offence on 11/2/2004. After investigation I submitted it for "C" Summary on

19/4/2004.

> In respect of MECR 3/04 I received the paper along with the Hon'ble courts order on 3/2/2004. I submitted the detailed noting on 9/2/2004. After consulting ACP Colaba Division, I registered the offence on 11/2/2004. The investigation in this case is still in progress."

7. It is to be noted that the statements in both the affidavits filed in the petition were verified by the contemner to be true and correct to his information gathered from the records of the case. Undisputedly, the affidavit is required to be verified and the verification should disclose the source of knowledge and the confirmation of the fact as to whether they are true to his knowledge or information or belief, as the case may be. In the case in hand, the contemner had verified the facts to be true to his information derived from the records, knowing well that the record does not corroborate the facts stated by the contemner.

8. The records apparently disclose that inspite of having apprehension of involvement of the bank officials and regarding need for further investigation in the

matter, the said officer had made a false statement on oath in his first affidavit to the effect that nothing further was required to be investigated and only the accused was required to be arrested and the chargesheet to be filed, and thereby had tried to mislead the Court apparently with the intention to get the petition dismissed at the stage of admission itself.

9. From the records, it is also apparent that the statement in the second affidavit to the effect that the investigating officer was busy from 5-1-2004 onwards with the cases handed over to him "earlier" to the case in hand is totally false to the knowledge of the contemner. The cases registered as MECR No.2/2004 and 3/2004 were handed over to the contemner much after the case in hand. The case MECR No.2/04 was registered pursuant to the order dated 17-1-2004 of the Magistrate and the case MECR No.3/04 was registered after order dated 3-2-2004 of the Magistrate, while the order in the case in hand was dated 5-1-2004. Yet the contemner made a false statement to the effect that when the case in hand was entrusted to him, he was busy with investigation in the matter of MECR Nos.2/04 and 3/04. Besides, on 5-1-2004 there were only four cases pending for investigation and not seven cases as alleged by the officer.

10. The investigating officer by the above quoted false statements on oath had clearly tried to mislead the Court with the intention to get the petition dismissed, and at no point of time till the disposal of the petition expressed willingness to withdraw from pursuing with his objection for transfer of the investigation even after the learned A.P.P. himself had fairly conceded to the need of transfer of the investigation to the Economic Offences Wing. Thus the investigating officer by his conduct and statements tried to interfere with the administration of justice in as much as that he tried to get the petition dismissed by making false statements on oath and to the prejudice of the petitioner when the facts clearly warranted the relief as prayed for by the petitioner.

11. The Apex Court in **U.P. Resi.Emp.Co-op. House B.Society and others v. New Okhla Indus.Deve.Authority and another**, reported in AIR 2003 SC 2723 has clearly held that filing of false affidavit amounts to contempt of Court following its earlier judgment in **Hiralal Chawla and another v. State of U.P. and others,** reported in (1990) 2 SCC 149.

12. As regards the apology, it would be necessary to ascertain whether the same is unconditional from the affidavit in reply filed by the contemner, since in case

of tendering of sincere unconditional apology by the contemner, the question of dealing with the issue of contempt in detail and to ascertain the gravity of the act of contempt and commensurate punishment for the same would not arise. It would be, therefore, necessary to ascertain whether there is any such unconditional apology tendered by the contemner in the case in hand.

13. The very second para of the affidavit in reply filed by the contemner is in relation to the apology. It reads that "..... I tender my unconditional apology, for being not careful in giving the proper facts, and instructions, to the learned A.G.P. drafting the affidavits filed by me in the said matter". It further states that "I submit that I have realised, my mistake and I tender my unconditional apology, to the Honourable Court for having committed these mistakes. I submit that therefore the Honourable Court I pray, may be gracious and kind enough to take the lenient view in this matter and be pleased to accept my unconditional apology". Again similar statement is to be found in para 13 which reads that "I say that this is clear carelessness on my part, for which, I tender, my apology. I say that I have realized what a grave mistake I have committed. I say that I only wish, that I should have been very very careful in giving proper instruction and making Affidavit in the Honourable High

Court. I say that I have realised grave mistake have been committed by me, and I tender my unconditional apology for that". Lastly, in para 14 there is a request for dropping of the proceedings by accepting the apology while stating that "In the light of these circumstances I pray earnestly that the Honourable Court be kind enough, accept my apology, and drop proceeding against me, by accepting the apology.".

14. Bare reading of the above contents in relation to the so called unconditional apology would disclose that the same is not in relation to the commission of contempt of Court but essentially for not being careful in giving proper facts and instructions to the A.G.P. and therefore having been committed a grave mistake in being careless on his part. In other words, according to the contemner he is not guilty of contempt of Court on account of having made false statements in the affidavits but it was his mistake in giving incorrect facts and instructions to the A.G.P. It is well-settled that the apology which may be accepted for condoning the act of contempt has not only to be unconditional but should disclose real contriteness, the consciousness of the wrong done as well as of the injury inflicted coupled with the sincere and earnest desire to make such reparation as lies in the contemner’s power. The apology can never be used as a weapon of defence to

purge the guilt of offence and as it has been ruled by the Apex Court it can never be intended to operate as a panacea. The apology coupled with a justification for the statements made in the affidavits or the denial of the intention to mislead the Court by making false statement, can not be said to be an unconditional apology. Such an apology can only be termed as a mere realisation of the contemner that his adventure has turned into a mis-adventure in as much as that he failed in misleading the Court to get the petition dismissed on the basis of the statement which was false to the knowledge of the contemner.

15. One hand the contemner pretends to be apologetic for having realised the mistake in giving incorrect facts and instructions to the learned A.G.P., at the same time the contemner has made categorical statements in paras 3, 5, 9 and 14 not only to justify his statements in the earlier affidavits but also sought to contend that there was no attempt on his part to mislead the Court by making those statements. It is to be noted that the contemner has on one hand categorically admitted that both the affidavits contained false statements. It is not the case of the contemner that at the time he made those statements of facts, he did not know that he was making false statements. On the contrary, the affidavit in reply discloses that the

statements of fact were made knowing well that he was making false statements of facts on oath. In para 3 of the affidavit he has stated that "I however say, that I have not made any attempt to mislead the court" and in that regard in relation to the contents of para 9 which contains a false statement, a justification therefor is sought to be derived with the help of the contents of para 6 of the first affidavit wherein he had referred to necessity of the original documents which were stated to have not been furnished by the petitioner to the investigating officer. He has further stated in para 5 that "..... I had instructed the learned AGP about my statement in para 9, which statement was made by me in a casual manner, but without in any way with intention to mislead the court. I deny that there was any intention, on my part, to mislead the Honourable Court". It has also been further stated in the same para that "The very existence of paragraph 6 is inconsistent with the allegations regarding any intention on my part, to mislead the court". As already observed, the para 6 related to non-furnishing of the original documents by the petitioner to the investigating officer. The contemner was very well aware at the time of filing of the first affidavit that the original documents were not made available to him by the petitioner and yet he had stated on oath that nothing further was required to be investigated except arrest of the accused and filing of

chargesheet, thereby informing the Court that the investigation was already concluded. It is also pertinent to note that the petitioner in the rejoinder had stated that the investigating officer himself had informed the petitioner to furnish the zerox copies of the documents and not the original documents and the demand for the original documents was made only after the petitioner had approached the authorities for transfer of the investigation to the respondent No.5 by withdrawing the same from the contemner. Apparently, the statement in para 6 of the first affidavit was not inconsistent with the statement of the contemner in para 9 in relation to conclusion of the investigation but was essentially to impress upon the Court that the petitioner-bank had approached the Court with unclean hands i.e., by suppressing the fact that there was no proper co-operation by the petitioner to the investigating officer and yet the investigating officer was prompt in conducting the investigation speedily and the same was concluded even without proper co-operation by the petitioner. The contention which is now sought to be raised in relation to para 6 of the first affidavit not only discloses clear intention on the part of the contemner to mislead the Court when those statements were made in the first affidavit but also discloses persistent attempt on the part of the contemner to mislead the Court even at this stage

regarding the said intention on the part of the contemner and the same instead of purging the contempt, aggravates the contempt.

16. There is yet another statement in the affidavit in reply which further aggravates the contempt. It is now sought to be contended that the statement relating to conclusion of the investigation was only in relation to Shri Keyur Shah, Smt. Vaishali Shah and Shri Balkrishna Rane. It was observed in the order dated 8-7-2004 that the contemner was fully aware in the month of March, 2004 itself that there was a need to investigate about the involvement of the bank officers in the offence alleged to have been committed by Hasmukhlal Harilal Doshi and others and, therefore, the investigation could not have been said to have been concluded even on the day of the filing of the first affidavit as there was no investigation carried out in relation to the involvement of those bank officers. Even in the course of the arguments in the above writ petition, before passing the order dated 8-7-2004, the inconsistency in the two statements in the two affidavits of the contemner was brought to the notice of the learned A.P.P. and he was asked to inquire from the contemner as to when he had realised about the need for investigation against the bank employees and it was informed to the Court that it was realised in the month of March itself. Even at that

stage, the contemner did not come forward either with apology or any of the contentions which are now sought to be advanced in the affidavit in reply. This is nothing short of juggling of the sentences in earlier affidavits which apparently discloses that the contemner is bent upon to continue to indulge in the activity of misleading the Court with the sole intention of avoiding punishment which he is bound to face on account of act of contempt of Court.

17. It is pertinent to note that the contemner has made categorical statement to the effect that the statement in para 9 of the first affidavit was in a casual manner and was not with the intention to mislead the Court and secondly, that the mistake committed by the contemner does not substantially interfere with the administration of justice nor does it tend to interfere with the administration of justice. In other words, the contemner has clearly denied that he is guilty of any act amounting to contempt of Court. In such circumstances, the contemner can hardly claim any benefit of the so called unconditional apology.

18. As regards the absence of intention on the part of the contemner to mislead the Court, as already observed above, the materials on record apparently disclose that the contemner did intend to mislead the Court with the

view to get the petition dismissed at the admission stage itself on the basis of his statements which were false to the knowledge of the contemner. Being so, the contention of the learned Advocate in that regard is devoid of substance. The another limb of the argument of the Advocate for the contemner in relation to the intention is that for the purpose of criminal contempt intention is not necessary. There can hardly be any quarrel about this proposition. Indeed the Apex Court in Pritam Pal's case has clearly ruled that an intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of Court and it is enough if the action complained of is inherently likely so to interfere. Similarly, in Delhi Development Authority's case, the Apex Court has held that in a case of criminal contempt, intention or motive is not the criteria and that of course, they may be considered for mitigation or aggravation of sentence as the case may be.

19. Undoubtedly, therefore, the law is well-settled that the intention is not an essential ingredient for commission of offence of criminal contempt of Court. However, when the acts complained of also disclose any such intention, certainly that would result in aggravating the offence and the same will have to be necessarily considered at the time of imposing the

sentence.

20. Another issue which is sought to be raised by the learned Advocate for the contemner, is that the matter relating to making of false statement of fact on oath in a judicial proceedings may amount to criminal contempt in terms of Section 2(c)(ii) and not under Section 2(c)(iii) in as much as that such an act may be said to interfere in due course of judicial proceedings and not the administration of justice. Undoubtedly, filing of false affidavit or making a false statement of fact on oath in a judicial proceedings would amount to interference in due course of such judicial proceedings and therefore it would fall under Section 2(c)(ii). But at the same time it should not be forgotten that any such act which causes or tends to cause prejudice to the cause of the opposite party or the litigant or results in delaying of dispensation of justice to such other party or litigant would certainly be an interference in the administration of justice and in that sense the contemptuous act could fall under both the provisions, namely Section 2(c)(ii) and (iii).

21. In **Rachapudi Subba Rao v. The Advocate-General, Andhra Pradesh,** reported in AIR 1981 SC 755, it was held that:-

> "The phrase "administration of justice" in sub-clause (iii) is far wider in scope than "course of any judicial proceedings". The last words "in any other manner" of sub-clause (iii) further extend its ambit and give it a residuary character. **Although sub-clause (i) to (iii) describe three distinct species of 'criminal contempt', they are not always mutually exclusive. Interference or tendency to interfere with any judicial proceeding or administration of justice is a common element of sub-clause (ii) and (iii).** This element is not required to be established for a criminal contempt of the kind falling under sub-clause (i)."
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> (emphasis supplied)

22. In Delhi Development Authority's case, the Apex Court has clearly ruled that an act which tends to interfere with the Court of justice or any act which tends to prejudice the Courts would amount to interference in the administration of justice and, therefore, will be an act of criminal contempt within the meaning of the said expression under Section 2(c) of

the Contempt of Courts Act, 1971. Being so, making false statements to mislead the Court to get an order of dismissal of the petition would certainly tend to interfere with as well as prejudice the judicial proceedings resulting in interference with the administration of justice.

23. In **S.R. Ramaraj v. Special Court, Bombay**, reported in (2003) 7 SCC 175 the Apex Court has held that false verification in relation to the relevant facts stated in the written statement amount to misleading the Court and results in interference with the administration of justice. It was observed that:-

> "Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But **it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the courts and thus produce mischievous consequences to the administration of civil and criminal justice.** A person is under a legal obligation to verify the allegations of

> fact made in the pleadings and if he verifies falsely, he comes under the clutches of law. In order to expose a person to the liability of a prosecution for making false statement there must be a false statement of fact and not a mere pleading made on the basis of facts which are themselves not false. Merely because an action or defence can be an abuse of process of the court, those responsible for its formulation cannot be regarded as committing contempt, but an attempt to deceive the court by disguising the nature of a claim is contempt. If the facts leading to a claim or defence are set out, but an inference is drawn thereby stating that the stand of the plaintiff or defendant is one way or the other it will not amount to contempt unless it be that the facts as pleaded themselves are false."
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> (emphasis supplied)

24. It is therefore clear that where a party to a proceeding in the Court discloses certain facts either in support of his claim or defence, and those facts

happen to be false, the same would render the party making such false statements liable to be prosecuted for contempt of Court. In cases where certain facts in justification of claim or defence are stated, and from those facts certain inference is sought to be drawn in support of the stand of the party, the same would not amount to contempt of Court, albeit the facts based on which inference is sought to be drawn should not be false by themselves otherwise different consequences could follow. But when the facts stated themselves are false, nothing further is required to warrant contempt proceedings against the person who makes such false statements. It has also been ruled that the other statements which result in misleading the Court or discloses even an attempt to deceive the Court, than it could result in mischievous consequence to the administration of justice and, therefore, the false statement/s would warrant criminal contempt as it would amount to interference with the administration of justice.

25. The concept of criminal contempt was well explained in the matter of **Hastings Mill Limited v. Hira Singh and others,** reported in 1978 Cri.L.J. 560. Shri Justice A.K. Sen, speaking for the Division Bench of the Calcutta High Court, held that:-

"16. S. 2(c) of the said Act has defined criminal contempt to mean doing of any act which either prejudices, or interferes or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner. In the case of Barada Kanta v. Registrar, Orissa High Court, AIR 1974 S.C. 710: (1974 Cri.L.J. 631), the Supreme Court pointed out that the terminology used in the definition is borrowed from the English Law of Contempt and embodies concepts which are familiar to that law which by and large was applied in India and they have to be understood in the sense in which they have been so far understood by such courts with the aid of English Law where necessary. Under the English Law any act which is likely to interfere with the course of justice will amount to contempt. Acts which are likely to interfere with the course of justice may be classified into 4 categories, namely, (1) acts which

interfere with persons having duties to discharge in a court of justice, (2) acts which amount to a breach of duty committed by persons officially connected with the court or its process, (3) acts which interfere with persons over whom the court exercises special jurisdiction and (4) acts which amount to an abuse of the Court's processes (See - The Law of Contempt Borrie and Lowe 1973 edition, Chapter VIII). **Abusing the court's process may mean different types of acts but generally the term connotes some mis-use of the court's process, the most serious example of which is an act which is intended to deceive the court, for example, by the deliberate suppression of facts or by the presentation of falsehood, but the same term also includes bringing of frivolous and vexatious proceedings. Therefore, an act of misleading the court by deliberate suppression of facts or by the presentation of falsehood is as much abuse or the court's process as the act of bringing frivolous and vexatious and**

> **oppressive proceedings.** In Wright v. Bennett (1948) 1 ALL E.R. 227 and Stevenson v. Garnett (1898) 1 Q.B. 677 it has been held taking of successive actions covering the same ground and litigating over again the same question is clearly an act of abuse of the process of court. Such acts are necessarily frivolous and vexatious apart from being oppressive to the defendant."
>
> (emphasis supplied)

26. Lastly it has been urged that even though the act in question amounts to contempt of Court, no sentence be imposed on him in view of Section 13 of the Contempt of Courts Act. The said Section provides that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under the Contempt of Courts Act for a contempt of Court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice. It is to be noted that when the act complained of substantially interferes or tends to interfere with the due course of justice which is a facet of the broad

concept of the administration of justice, then the contemner is not entitled to evade the penal consequences of such act, by taking shelter of Section 13 of the said Act. We are clearly fortified in this view by the decision of the Apex Court in **R. Subba Rao's** case (supra).

27. Once the investigation in a criminal case is concluded, there could hardly be any occasion for transfer of investigation to another agency. Being so, when it is disclosed by the investigating officer that except arrest of the accused and filing of the chargesheet nothing further is required to be done except arresting the accused and filing of chargesheet, thereby making it clear that the investigation in the matter is concluded, normally the petition seeking the relief of transfer of investigation becomes a futile exercise. Knowing it well, if the investigating officer misleads the Court on this important aspect of the matter and thereby makes the Court believe that any order of transfer of the investigation at that stage would be of no consequence on the investigation of the matter, knowing well that such representation is false, certainly it would be an act of interference with the course of judicial proceedings as well as with the administration of justice. And that is what has been done by the contemner in the case in hand, which is

clearly established by the materials on record referred to above apart from his own admission in the affidavit in reply.

28. The fall out of the above discussion is that the contempt of Court committed by the contemner falls under both the sub-clauses (ii) and (iii) of Section 2(c) of the Contempt of Courts Act and the acts of the contemner complained of and established by the materials referred to above as well as admitted by him clearly tend to interfere with the due course of justice which is a facet of broad concept of administration of justice and, therefore, is not entitled to claim the benefit under Section 13 of the Contempt of Courts Act. There is no unconditional apology tendered by him. The so called apology lacks bona fide and is hereby rejected. In the facts and circumstances, the contemner certainly warrants punishment in exercise of the power under Article 215 of the Constitution of India read with Section 14 of the Contempt of Courts Act, 1971. Being so, after hearing the contemner on the issue of sentence and bearing in mind the law laid down by the Apex Court in **Smt. Pushpaben and another v. Narandas V. Badiani and another,** reported in AIR 1979 SC 1536 as well as by the Division Bench of this Court in **District & Sessions Judge, Aurangabad v. Deelip Balaram Bedekar & Anr.,** reported in 2001 ALL M.R. (Cri.) 2137, in our

considered opinion the ends of justice would meet if the contemner is directed to undergo imprisonment till the rising of the Court and to pay a fine of Rs.50,000/-, to be paid within fifteen days from today, failing which the contemner to undergo simple imprisonment for fifteen days. Order accordingly.

(R.M.S. KHANDEPARKAR, J.)

(R.S. MOHITE, J.)